



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**APPEAL DECISION SUMMARY**

**APPEAL No:** 2011-2067

**DATE:** November 3, 2011

**AGENCY:** DSS

**OUTCOME:** (check one)

☐ SUSTAINED ☒ REVERSED ☐ REMANDED  
☐ INVALID/FULL  
☐ SUSTAINED and REMANDED  
☐ REVERSED and REMANDED  
☐ AGENCY ERROR/OTHER

**ISSUE ON APPEAL:** Eligibility-ABD-excess resources

**GENERAL RULE OF LAW:** Requirement to meet resource guidelines

1. 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . provide for taking into account only such income and resources as are . . . available to the applicant or recipient.

2. In order to be eligible for Medicaid, in addition to meeting non-financial requirements, an individual must meet all the requirements of a Medicaid covered group. There are two classifications of covered groups, the categorically needy (CN) and the medically needy (MN). The CN classification is divided into subclassifications of categorically needy, categorically needy non-money payment (CNNMP) and medically indigent (MI). Within some covered groups are several definitions of eligible individuals. The agency must verify that an individual meets a definition and a covered group's requirements in order for that individual to be eligible for Medicaid. Medicaid Manual, Volume XIII, M0310.001, A (p. 1).
3. There are non-financial and financial eligibility requirements that must be met before an individual can be determined eligible for Medicaid. The financial eligibility requirements include an evaluation of asset transfers, resources and income. Asset transfers may affect eligibility for institutionalized individuals. Resources and income must be within the

resource and income limits appropriate to the individual's covered group. Medicaid Manual, Volume XIII, M0210.001, B, 1 & 2 (p. 1).

4. The Aged, Blind, and Disabled (ABD) covered groups in the CNNMP subclassification include ABD individuals who are institutionalized in a medical institution, who meet all Medicaid eligibility requirements and have income before exclusions that is less than 300% of the SSI individual payment limit. Medicaid Manual, Volume XIII, M0310.002, B, 1 (p. 2).
5. Resources are cash and any other personal or real property that an individual (or spouse, if any) owns; has the right, authority, or power to convert to cash (if not already cash); and is not legally restricted from using for his/her support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B, 1 (p. 3).
6. An individual must have some form of ownership interest in property in order for the property to be considered a resource. The fact that an individual has access to property, or has a legal right to use it, does not make it a resource if there is no ownership interest. Medicaid Manual, Volume XIII, M1120.010, B, 1 (p. 2).
7. Resource limit is the maximum dollar amount of countable assets an individual, couple, or family may own and still meet the established criteria for medical assistance in an ABD category. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, A (p. 2); M1110.003, B, 1 (p. 2).
8. The income and resource limits are established in relation to the number of persons in the assistance unit. The number of persons in the assistance unit and the individual's covered group classification determine which resource and income limits apply. Medicaid Manual, Volume XIII, M0510.001, A (p. 1)
9. An institutionalized individual is an assistance unit of one person, considered living separately from his spouse and/or parent(s), beginning the month in which he meets the definition of "institutionalization." Medicaid Manual, Volume XIII, M1460.300, A (p. 12).
10. The resource limit for one person in the CN, CNNMP, and MN covered groups is \$2,000. The resource limit for one person in the MI ABD with income  $\leq$  80% Federal Poverty Limit (FPL) covered group is \$2,000. The resource limit for one person in the QMB, SLMB, and QI covered groups is \$6,680. Medicaid Manual, Volume XIII, M1110.003, B, 2 (p. 2).
11. Make all resource determinations per calendar month. Resource eligibility exists for the full month if countable resources were at or below the resource standard for any part of the month. Medicaid Manual, Volume XIII, M1110.600, A (p. 18).
12. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).

13. The value of a resource is amount of an individual's equity in the resource. For real property, the equity value is the current market value (CMV), which is 100% of the local tax assessed value, minus any encumbrances on the property. Medicaid Manual, Volume XIII, M1110.400, 1 & 2 (pp. 10-11).
14. The general rules concerning resources apply to evaluating the resource status of property held in a trust. Medicaid Manual, Volume XIII, M1120.200, A (p. 12).
15. A trust is a property interest whereby property is held by an individual (trustee) subject to a fiduciary duty to use the property for the benefit of another (the beneficiary). A grantor (also called a settlor or trustor) is a person who creates a trust. A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit. A trust beneficiary is a person for whose benefit a trust exists. Medicaid Manual, Volume XIII, M1120.200, B, 1-4 (p. 12a).
16. The trustee in a land trust receives both legal and equitable title to the property upon transfer of the property to a trust. The beneficiary retains no interest, legal or equitable, in the property itself, but instead holds only a personal property interest in the rents, proceeds, and profits from the property. Va. Code Ann. § 55-17.1; Austin v. City of Alexandria, 574 S.E.2d 289 (Va. 2003); Air Power, Inc. v. Thompson, 422 S.E.2d 768 (Va. 1992).
17. If an individual (applicant or recipient) has legal authority to revoke the trust and then use the funds to meet his food, clothing or shelter needs, or if the individual can direct the use of the trust principal for his/her support and maintenance under the terms of the trust, the trust principal is a resource for Medicaid purposes. Medicaid Manual, Volume XIII, S1120.200, D, 1, a. (p. 15).
18. The revocability of a trust and the ability to direct the use of the trust principal depends on the terms of the trust agreement and/or on State or federal law. If a trust is irrevocable by its terms and under State law cannot be used by an individual for support and maintenance, it may not be a resource. Medicaid Manual, Volume XIII, M1120.200, D, 2 (p. 16).
19. A revocable trust means a trust that is revocable by settlor without the consent of the trustee or a person holding an adverse interest. Va. Code Ann. § 55-541.03.
20. A vacancy in a trusteeship occurs if an individual serving as trustee is adjudicated an incapacitated person. Va. Code Ann. § 55-547.04.
21. Ownership of a dwelling occupied by the applicant as his home does not effect eligibility. Medicaid Manual, Volume XIII, M1130.100, A, 1 (p. 1). An institutionalized individual's home is an excluded resource for six months beginning with the month following the month of the individual's admission to a medical institution. Medicaid Manual, Volume XIII, M1130.100, D, 2 (p. 3).
22. An incapacitated individual means an individual who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating

information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (1) meet the essential requirements of his health, care, safety, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs or provide for his or her support or the support of his legal dependents without the assistance or protection of a conservator. Medicaid Manual, Volume XIII, M0110.200, K (p. 7).

23. An individual is considered to have free access to, and unrestricted use of, property even when he/she can take those actions only through an agent, e.g., a representative payee, guardian, etc. Medicaid Manual, Volume XIII, M1120.010, C, 1 (p. 3).
24. A conservator shall exercise reasonable care, diligence, and prudence and shall act in the best interests of the incapacitated person. A conservator's powers and duties may be limited by the order of appointment and include the power to borrow money and mortgage the incapacitated person's property, to execute and deliver all instruments, and to take all other actions that will serve in the best interests of the incapacitated person. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate. Va. Code Ann. § 37.2-1022, § 37.2-1023.
25. The retroactive period is the three months immediately prior to the application month. Medicaid Manual, Volume XIII, M1510.101, A, 1 (p. 2).
26. An application for Medicaid or Auxiliary Grants (AG) is also an application for retroactive Medicaid coverage whenever the applicant reports that he/she received a Medicaid-covered service in retroactive period. Eligibility for retroactive coverage is determined at the same time as the ongoing eligibility is determined, using the same application. Medicaid Manual, Volume XIII, M1510.101, B (p. 2).

**AGENCY DECISION:** The Hearing Officer reversed the action of the agency based upon the following:

The Appellant did not have an ownership interest in the property, or otherwise have the legal right or ability to use the property for his support and maintenance, once the property was transferred to a trust. Therefore, the DFS incorrectly determined that the property was a countable resource to the Appellant. The Appellant's resources were within Medicaid limits absent the property, and therefore, the DFS incorrectly denied the Appellant's Medicaid application due to excess resources for the retroactive period and for ongoing coverage.

#### **APPLICABLE LAW/REGULATIONS/POLICY**

##### **United States Code**

42 U.S.C. §1396a(a)(17)(B)

##### **Code of Virginia**

§ 37.2-1022

§ 37.2-1023

§ 55.17.1

§ 55.541.03

§ 55-547.04

## **Supreme Court of Virginia**

Austin v. City of Alexandria, 574 S.E.2d 289 (Va. 2003)

Air Power, Inc. v. Thompson, 422 S.E.2d 768 (Va. 1992).

## **Medicaid Manual, Volume XIII**

M0110.200, K (p. 7)

M0130.200, H (p. 8)

M0210.001, B, 1 & 2 (p. 1)

M0310.001, A (p. 1)

M0310.002, B, 1 (p. 2)

M0510.001, A (p. 1)

M1110.003, A (p. 2)

M1110.003, B, 1 & 2 (p. 2)

S1110.100, B, 1 (p. 3)

M1110.400, 1 & 2 (pp. 10-11)

M1110.600, A (p. 18)

M1120.010, B, 1 (p. 2)

M1120.010, C, 1 (p. 3)

M1120.200, A (p. 12)

M1120.200, B, 1-4 (p.12a)

S1120.200, D, 1, a. (p. 15)

S1120.200, D, 2 (p. 16)

M1130.100, A, 1 (p. 1)

M1130.100, D, 2 (p. 3)

M1460.300, A (p. 12)

M1510.101, A, 1 (p. 2)

M1510.101, B (p. 2)